

7.4 If Contractor is delayed at any time in the progress of the Work by (a) any act or omission of Owner, the Architect or any separate contractor or consultant employed by Owner (but not resulting from or based on any default by Contractor or any of its subcontractors, or any failure by Contractor or its subcontractors to comply with the Contract Documents); (b) labor disputes (provided same are not occasioned by Contractor's failure to pay its employees or subcontractors); (c) fire, extraordinarily severe inclement weather, earthquake, extraordinarily unusual delay in transportation, inability to obtain necessary materials, equipment or labor or by any act or lack of action by governmental authority through no fault of Contractor; or (d) any cause beyond the reasonable control of Contractor and its subcontractors, then the dates set forth in Paragraph 7.2 may be extended for a period equal to the time by which the completion of the Work or the relevant portions thereof is delayed by reason of such causes, provided in each instance that the Critical Path Schedule is affected and a timely and proper claim is made as set forth in Paragraph 7.5 below. For purposes hereof, "extraordinarily severe inclement weather" shall mean weather patterns that may not reasonably be anticipated during the period of construction of the Work, and which at a minimum, exceed the thirty (30) year return interval for such events according to the National Oceanographic and Atmospheric Administration (NOAA) for the Project area.

7.5 All claims for extensions of time shall be made in writing to Owner not more than ten (10) days after the occurrence of the cause for delay of which Contractor is aware, or in the exercise of reasonable care should have been aware, by which Contractor seeks to extend the dates set forth in Paragraph 7.2 pursuant to Paragraph 7.4 above. Failure to request such extensions of any such dates by Contractor in accordance with the foregoing shall constitute a waiver of any right to claim subsequently any adjustment in any such dates based upon any of such causes. It will be the Contractor's obligation to demonstrate to the Owner how any requested time extension has adversely impacted the Project's Critical Path Schedule. Only time extensions which have been demonstrated to impact the Project's Critical Path Schedule shall constitute a valid time extension for extending such date.

7.6 In the event that Owner desires to accelerate Contractor's performance of the Work (for reasons other than those set forth in Paragraph 7.3 above) with greater speed than contemplated by Paragraph 7.2, Contractor shall, upon written notice thereof from Owner, employ overtime labor and expedite delivery of materials as directed by Owner. Such notice shall be deemed a Change Order and the Contract Sum shall be adjusted on account of such Change Order as provided elsewhere herein.

7.7 Notwithstanding the fact that a dispute, controversy or question shall have arisen relating to (i) the interpretation of any provision of the Agreement, (ii) the performance of any Work, (iii) payments which Owner claims it is entitled to withhold pursuant to Paragraphs 4.1 or 6.5 hereof or (iv) otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any Work required to be performed or stop or delay the delivery of any materials required to be furnished hereunder, pending the outcome of such dispute or controversy.

7.8 Owner shall have the right to occupy portions of the Project as and when completed, but prior to Date of Final Completion, only if Owner accepts such portions as substantially complete (subject to punch list corrections) and Owner agrees to the commencement of warranties and guarantees as to such occupied portions.

#### **8. Contractor's Defense, Indemnification, Warranties and Guarantees**

8.1 Contractor agrees to indemnify and hold harmless Owner and, in cases where Owner is a tenant of the real property on which the Project is being constructed, Owner's landlord, their subsidiaries and affiliated companies and their respective officers, directors, agents, representatives, consultants and employees, from and against any and all loss, liability, claim, damage, demand, cost and expense of every kind and nature whatsoever (including reasonable attorneys' fees) arising out of or resulting from the performance of the Work, or caused by any act or omission on the part of Contractor, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether such act is caused in part by a party indemnified hereunder. Contractor shall have no obligation to indemnify or hold harmless Owner or

Owner's landlord, their subsidiaries and affiliated companies and their respective officers, directors, agents, representatives, consultants and employees from losses, liabilities, claims, damages, demands, costs and expenses caused by the proven sole negligence of such entity.

8.2 Contractor agrees that if any legal action or other proceeding of any nature is brought against Owner, Owner's landlord where applicable, or Contractor, or any of their respective officers, directors, agents, representatives, consultants or employees, the Architect, or any of them (whether or not any other party defendant shall be joined in the action), because of any of the foregoing matters against which Contractor agrees to indemnify Owner or Owner's landlord, Contractor shall at its own cost and expense, settle or defend such action, paying all costs, expenses and attorneys' fees involved therein. Notwithstanding the foregoing, in any action of the nature described above in which Owner or Owner's landlord is named as a party, Contractor agrees that its selection of legal counsel supplied in connection with any such action shall be subject to Owner's prior written approval, and Owner shall have the right to participate in the defense of any such action at no cost to Owner. The obligations of Contractor under this paragraph shall not extend to the liability of the Architect, its agents, consultants or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, Drawings or Specifications, or (ii) the giving of or the failure to give directions or instructions by the Architect, its agents or employees, provided that the giving or failure to give any such directions or instructions is the primary cause of the injury or damage, unless Contractor in exercise of reasonable care should have known, as appropriate, that the giving of such instruction was improper or that such direction or instruction should have been given.

8.3 Contractor shall defend all suits and claims for infringement of any patent, copyright, trademark or other intellectual property rights and shall hold the Owner and Owner's landlord free and harmless from and against any and all loss, liability, claim, damage, demand, cost and expense on account thereof, except that Owner, or Owner's landlord where applicable, shall be responsible for all such loss, liability, claim, damage, demand, cost and expense when a particular design, process or product of a particular manufacturer is specified by Owner. If Contractor has reason to believe that the design, process or product specified by Owner is an infringement of a patent, Contractor shall be responsible for such loss unless Contractor promptly provides such information in writing to the Architect and Owner.

8.4 Owner, or Owner's landlord where applicable, shall have no obligation to pay or reimburse Contractor with respect to any of the costs and expenses incurred by Contractor in accordance with paragraphs 8.1 through 8.3 above. In the event any such loss, liability, claim, damage, demand, cost or expense is asserted against or incurred by Owner or Owner's landlord or their agents, representatives, consultants, or employees, or the Architect in connection with the foregoing, Owner, in addition to all other rights and remedies it may have with respect thereto, may withhold and offset from any payment then or thereafter due to Contractor under the terms of this Agreement an amount sufficient in Owner's judgment to protect and indemnify against any such matter.

8.5 In addition to Contractor's warranty and any guarantees or warranties of Contractor set forth herein or in any other Contract Documents, all of the Work, including all of the materials and equipment incorporated therein, is guaranteed by Contractor against failure due to defects in workmanship, materials and improper installation for a period of one (1) year following the date on which the completed Work is accepted by the Owner or the Date of Substantial Completion, whichever is earlier, unless in each case a longer period of time is specifically provided for in the Contract Documents or is implied by law ("Contractor's Guarantee"). If, within such one year period, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after the Date of Substantial Completion by the period of time between the Date of Substantial Completion and the actual performance of the Work. This

obligation shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice after discovery of the condition.

8.5.1 Any Work performed following the issuance of the Certificate of Final Completion and the replacement of any Work, including any of the materials and equipment incorporated therein, pursuant to the foregoing guarantee of Contractor, also shall be unconditionally guaranteed in accordance with the foregoing for a period of one (1) year after completion of replacement, as the case may require, of each such item of Work.

8.5.2 Nothing contained in Paragraphs 8.5 and 8.5.1 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraphs 8.5 and 8.5.1 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

8.5.3 Contractor shall cause all guarantees and warranties from subcontractors, materialmen and equipment suppliers to be made directly to Owner as well as Contractor and Contractor shall furnish Owner with written evidence of such guarantees and warranties. All of such guarantees and warranties (including Contractor's warranties and guarantees under the Contract Documents) shall include the cost of all labor, materials and other costs required to replace defective, unsound or improper Work and materials, including damage to adjacent equipment or materials and the replacement or refinishing of same. As part of the Work, Contractor promptly shall enforce all of said guarantees and warranties for Owner's benefit if Owner shall request Contractor so to do. Neither payment hereunder, including the final payment to Contractor, nor Owner's use and occupancy of the Project or any part thereof, shall release Contractor from liability to Owner for workmanship, materials and equipment incorporated into the Work which are found to be defective, unsound or improper or otherwise covered by any such guarantees or warranties.

8.6 Contractor warrants to Owner and Architect that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved or authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

8.7 The Contractor's warranties (including Contractor's Guarantee) shall cover all Work in the Contract Documents, whether or not any portion or trade has been assigned or sublet. In the event any portion of the Work is performed by assignees or subcontractors, their written warranty to Owner covering their respective portions of the Work for the periods required shall be collected by Contractor, who shall deliver them, together with his own warranty, to Owner. Assignees' and subcontractors' warranties shall expressly provide that the same may be enforced directly by Owner, if he so elects, and shall run concurrently with the Contractor's warranties. All such warranties shall be secured by the Contractor's performance bond when such bond is required. No warranties by subcontractors shall in any way relieve Contractor of his warranty obligations or obligate Owner to proceed under any subcontractor warranty in lieu of or before proceeding against Contractor's warranties.

8.8 Where any material, process or method of operation or application procedure is required which, in the opinion of Contractor, would render the finished Work unsuitable for the required warranty, then before any Work is started, such matter shall be objected to in writing to the Owner stating reasons therefore and recommending a substitute so that the Work, when completed, will be suitable for the required warranty. In the event the Contractor's

recommendation is approved, the Work shall be installed in accordance therewith and at no change in the Contract Document price unless otherwise authorized.

8.9 Defective materials, equipment and workmanship occurring within any warranty period may be repaired where such repair produces results in conformity to Contract Documents requirements relating to appearance, performance and reliability. Where the nature of the defective materials, equipment and workmanship is such that acceptable results cannot be obtained by repair, such defective items shall be removed and replaced with new materials, equipment and workmanship complying with Contract Documents. All remedial Work shall be subject to Owner's approval.

8.10 Payment and performance bonds shall be provided by Contractor at the request of Owner. It is expressly understood that the cost of the bond is to only include the direct cost, to the Contractor, from the bonding company; those items not to be included in bond cost are mark-up and/or general administrative expenses of the contractor's home office.

8.11 Contractor shall not have, and hereby waives, any right to file any mechanic's lien, or claim of any sort or kind, against the premises of Owner or any part thereof, unless Contractor shall have given Owner ten (10) days' prior written notice of Contractor's intention to file such lien or claim and a statement of the basis of such lien or claim. Contractor agrees that providing such notice shall be a condition precedent to its rights to file any such lien or claim. Contractor shall not permit or suffer any mechanic's or other similar lien filed by any subcontractor, material vendor, laborer or materialman to remain upon the premises of Owner and shall satisfy and have discharged any lien so filed within fifteen (15) days of its filing or such earlier period as may be necessary to avoid enforcement thereof. Contractor shall have the right to bond off or provide other satisfactory security against any unreasonable and improper lien which Contractor desires to contest. Contractor agrees to indemnify and hold Owner, and Owner's landlord where applicable, free and harmless from and against any and all loss, liability, claim, damage, cost and expense from any lien on the Project which is placed on or remains on the Project in connection with the Work, or any stop notice or similar action on the part of any subcontractor, material vendor, laborer or materialman, and Contractor shall at its sole cost and expense save and defend Owner, and Owner's landlord where applicable, from any and all cost and expense in connection therewith. In the event Contractor should neglect or refuse to cause any such mechanic's or other similar lien promptly to be discharged or bonded off as required above, Owner, after giving Contractor seven (7) days' written notice of its intention so to do, shall have the right, but not the obligation, to bond off such lien and such payment incurred by Owner shall be credited to the account of the Owner. Owner shall be entitled to offset one hundred percent of the amounts so bonded, plus twenty-five percent of such amounts as reasonable attorneys' fees, against payments thereafter becoming due to Contractor hereunder. Owner may exercise any other right or remedy granted by the Agreement (including termination hereof for cause) or granted by law. The bonding off of any lien by Owner pursuant to the foregoing shall not be deemed to cure or waive Contractor's default.

8.12 Should Contractor neglect or refuse to pay promptly when due any legitimate or undisputed expense incurred by it pursuant to the Agreement, Owner, after giving Contractor seven (7) calendar day's written notice of its intention so to do, shall have the right but not the obligation, to pay such expense directly and such payments shall be credited to the account of the Owner. Owner shall be entitled to offset the amounts so paid against payments thereafter becoming due to Contractor hereunder. Owner may exercise any other right or remedy granted by the Agreement (including termination hereof for cause) or granted by law. The payment of any expense by Owner pursuant to the foregoing shall not be deemed to cure or waive Contractor's default. Owner will not make any such payment, however, without prior consultation with Contractor or an explanation of Contractor's reason for refusing to pay promptly such expense as and when due.

9. **Insurance**

9.1 Prior to the commencement of any Work or the performance of any service hereunder by Contractor or any of its subcontractors, Contractor shall procure the following insurance coverage and maintain such insurance in full force and effect until all of the Work is completed and accepted for final payment, unless otherwise specified herein. All such insurance shall be for the benefit and protection of Owner and Contractor and shall name Owner, its subsidiaries and affiliated companies, and their respective officers, directors, Owner's landlord and any party who owns a fee interest in and to the real property to be improved by the Project, or any construction lender for such project, as an additional insured. All insurance companies, the form of all policies and the provisions thereof shall be subject to Owner's prior approval. The insurance to be procured and maintained by Contractor as hereinabove provided shall consist of the following:

(a) Statutory worker's compensation and occupational disease insurance and employer's liability insurance, as required by the Worker's Compensation Act of the state in which the Project is located, and employer's liability insurance with minimum limits of not less than \$500,000.

(b) Commercial General Liability Insurance, such policy to include the following provisions:

(i) Coverage and Limits of Liability:

General Aggregate Limit (other than products/completed operations).....	\$4,000,000
Products Completed Operations Aggregate Limit ....	\$4,000,000
Personal & Advertising Injury Limit.....	\$4,000,000
Each Occurrence Limit.....	\$3,000,000
Fire Damage Limit (any one fire).....	\$100,000
Medical Expense Limit (any one person).....	\$5,000

(ii) Designated Construction Projects General Aggregate Limit

(iii) Products-Completed Operations Insurance to remain in force for a minimum of two years after completion of the job, or the length of the guarantee, whichever is greater.

(iv) Contractual Liability:

- (1) Specifically insuring the liability assumed under the Contract Documents entered into between the Contractor and Circuit City Stores, Inc.
- (2) With respect to the contractual obligation of Contractor to provide liability insurance to Circuit City Stores, Inc., this policy shall apply to any loss or claim before any contribution by the insurance of Circuit City Stores, Inc.

(v) XCU Coverage (delete exclusions if present)

(vi) Waiver of Subrogation in favor of Owner

(vii) Coverage to be written on an occurrence basis policy form.

(viii) Primary Insurance - This policy is to be primary coverage, and any other insurance in force for the Owner shall act as excess coverage only and not contribute in the payment of any claim made hereunder to the extent of the limits of liability afforded hereunder.

(ix) Notice of Occurrence - The failure to give timely notice to the insurance company of any occurrence giving rise to a claim hereunder shall not be construed as late notice unless an executive officer of the named insured had actual knowledge of the occurrence and then failed to notify the insurance company in accordance with the policy conditions.

(x) Cancellation - In the event of cancellation, material change or non-renewal, sixty (60) days advance written notice by certified mail will be sent to Owner and Contractor.

(xi) The insurance shall not contain any exclusions other than exclusions forming a part of the standard liability insurance policy as currently in use by the Insurance Services Office, except that all exclusions otherwise contained therein that are in conflict with the conditions and coverage as required by this Agreement shall be void; provided, however, in no event shall such insurance prohibit cross-liability of other insured parties covered by such insurers (severability of interest).

(c) Commercial Automobile Liability - Including all owned, non-owned and hired vehicles, with limits of liability not less than \$1,000,000 combined single limit (CSL).

(d) Umbrella Excess Liability with limits of not less than \$1,000,000 providing coverage over primary insurance coverage, written on a following form basis.

(e) Such other insurance and coverage as Owner may reasonably request.

(f) Certificates of Insurance applicable to this section, shall be provided as follows on AIA Document G705 or Accord Form 25-S, Accord Form 27, as applicable, and shall specifically set forth evidence of all coverage required by this Paragraph 9.1 and shall reference job site by location and address.

(i) Certificate or signed binder to be issued and addressed to:

Circuit City Stores, Inc.  
9950 Mayland Drive  
Richmond, Virginia 23233  
Attention: Construction Department

(ii) Certificate must provide sixty (60) days notice of any material change or cancellation. Any wording limiting notice to "best efforts, endeavor to advise, not responsible to notify, etc." WILL RESULT IN CERTIFICATE BEING REJECTED.

(g) In the event that Contractor fails to procure or maintain any of the insurance required pursuant to this Section, Owner, at its election, but without any obligation to do so, may obtain such insurance for the benefit of Owner and Contractor and may either reduce the Contract Sum in a like amount or deduct the cost thereof from any payment then or thereafter due to Contractor.

9.2 Contractor shall obtain builder's risk and physical damage insurance naming Owner as an additional insured and Loss Payee, for the following items on standard "All Risk" or, "Cause of Loss - Special Form", forms, subject to the standard terms, conditions, and exclusions therein set forth, in an amount not less than One Hundred Percent (100%) of the completed value thereof, subject to standard exclusions and deductible limitations satisfactory to Owner (not to exceed \$10,000), but any net loss incurred by Contractor as a result of such standard exclusions or deductible limitations shall be reimbursed by Owner. Such insurance shall include coverage at least with respect to the following:

- (a) The structures upon and in which the Work shall be performed (to the extent that it includes the premises hereinabove described).
- (b) All insurable items of the Work and materials once such materials are incorporated into the Work, are located upon the premises of the Project or are located at off-site storage areas approved by Owner.
- (c) Owner, Contractor, and all subcontractors waive all rights each against the others for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 9.2, except such rights as they may have to the proceeds of such insurance. Similar waivers will be included in all subordinate contracts of Owner, Contractor and subcontractors where legally required for validity.
- (d) Such insurance shall contain a loss payable endorsement in favor of the Owner or its order, as their interests may appear.
- (e) Valuation - Shall be the replacement cost at time of loss with new material of like kind and quality.
- (f) Subrogation - In all cases of loss, all rights of subrogation by the insurance company for loss caused by Owner, Contractor or any subcontractor are waived.
- (g) Cancellation - In the event of cancellation, material change or non-renewal, sixty (60) days advance written notice by certified mail will be sent to the Owner and contractor.
- (h) Transit coverage applicable to Work and Materials transported to and from any off-site storage area.

9.3 All sums insured under Contractor's property insurance shall be made payable jointly to Contractor and Owner as insureds, subject to the requirements of any applicable mortgagee clause. The Contractor shall pay the subcontractors their proportionate shares of insurance proceeds to which the Contractor is entitled hereunder.

9.4 Prior to obtaining the insurance required by Paragraph 9.2, Contractor shall inform Owner in writing of the cost to Contractor of obtaining such insurance. At Owner's option, Owner shall thereafter have the right to obtain such insurance on Contractor's behalf and the Contract Sum shall be reduced by the insurance costs so avoided by Contractor.

**10. Ownership of the Work**

10.1 Subject to Contractor's obligations to obtain insurance as aforesaid, ownership of all and each part of the Work as and when completed and incorporated in the Work, and to each and all of the materials as and when affixed to the Project and incorporated therein, shall be in the Owner. Ownership of all materials and equipment delivered to the Project site or approved off-site storage areas, but not affixed to the Project and incorporated therein, shall become the property of Owner at such time that such materials are paid for by Owner, and under no circumstances shall material which has been delivered to the Project site or storage areas be removed without Owner's prior written approval.

10.2 The Contractor hereby agrees to hold Owner and Owner's landlord harmless from any claims or damage of any type including consequential damages on account of loss of use, to any personal property belonging to the Contractor, its subcontractors, suppliers, employees or representatives regardless of whether Contractor is deemed responsible in whole or in part for such damage and whether caused in whole or in part by Contractor's negligence.

**11. Accounting, Inspection and Audit**

11.1 Contractor shall check all materials, equipment, labor and services of any type involved with or incorporated into the Work and shall keep full, detailed and accurate records and accounts thereof, showing the actual net costs to Contractor of all items of labor, materials, supplies, services and other expenditures of whatever nature for which payment or reimbursement is authorized or required under the terms of the Agreement, as may be necessary for proper financial management under the Agreement, and the system of accounting shall be satisfactory to Owner or to an auditor appointed by Owner. Contractor shall retain and preserve all such records for a period satisfactory to Owner (but not less than three (3) years) after final payment hereunder. Owner and its representatives, employees and agents shall be afforded complete access at all reasonable times to all of the Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, accounts, memoranda and all other materials with respect to the cost of the Work for any Change Order or disputed sum hereunder. The foregoing obligations shall survive any expiration or termination of the Agreement and the completion of the Work contemplated hereby.

11.2 Contractor's records, including but not limited to accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Agreement (all foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and reproduction by Owner's agents or its authorized representative to adequately permit evaluation and verification of costs of the Work, and any invoices, Change Orders, payments or claims submitted by the Contractor or any of his payees pursuant to the execution of the Contract Documents.

11.3 Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to



evaluate and verify direct and indirect costs (including overhead allocations), as they may apply to costs associated with the Agreement.

11.4 Contractor shall require all subcontractors, sub-subcontractors, insurance agents and material suppliers to comply with the provisions of this Section by insertion of the requirements hereof in a written contract agreement between Contractor and such party. Contractor will cooperate fully and will cause all of its officers, directors, agents, representatives and successors and all of its subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.

11.5 Owner's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.

11.6 If an audit inspection or examination in accordance with this Article discloses overcharges of any nature by the Contractor to the Owner in excess of one percent (1%) of the total contract billings, the actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments or payments which must be made as a result of any such audit or inspection of the Contractor's invoices or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of Owner's findings to Contractor.

## **12. Dispute Resolution**

12.1 All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, may, at the sole option of the Owner, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. This provision shall be specifically enforceable in any court of competent jurisdiction. Nothing in this Section 12 shall be deemed to require the Owner to subject disputes under the Contract Documents to arbitration. If the Owner does not opt for arbitration, claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement shall be resolved in accordance with Section 12.2 herein. Sections 12.1 and 12.2 are subject to the Owner's right to render a final and binding decision pursuant to Section 12.6.

12.2 All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof or relating thereto which Owner does not elect to subject to arbitration shall be decided a court in litigation, and any civil action in furtherance thereof shall be brought exclusively in either the U.S. District Court for the Eastern District of Virginia, Richmond Division, or the Circuit Court of Henrico County, Virginia.

12.3 As a condition precedent to the institution of any action (lawsuit, arbitration, etc.) hereunder, all disputes shall be submitted to mediation before a professional mediator mutually selected by the parties. Such mediations shall be conducted at a mutually agreed time and place, shall not be less than one day in length, and the costs and expenses of the mediator shall be split equally between the parties. Only upon the unsuccessful completion of such mediations shall either party have the right to pursue further resolution of outstanding issues hereunder.

12.4 When the Owner has opted for arbitration, the following will apply:

12.4.1 Arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or any other manner, any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. Consolidation shall be decided by an arbitrator in accordance with AAA rules. The arbitrator(s) shall decide procedural and substantive issues regarding arbitrability and whether conditions precedent have been satisfied.

12.4.2 Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association Regional Office of Atlanta, Georgia. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the applicable statute of limitations would bar institution of a legal or equitable proceeding based on such claim, dispute or other matter in question.

12.4.3 The award rendered by arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

12.4.4 The Federal Arbitration Act shall apply and govern disputes submitted to arbitration.

12.4.5 If the amount in controversy is in excess of \$250,000, then the matter shall be decided by a panel of three arbitrators selected in accordance with the applicable rules of the AAA. All other matters shall be decided by a single arbitrator. If it becomes apparent that the amount in controversy exceeds \$250,000 after the selection of a single arbitrator, the AAA shall either add two more arbitrators to the panel or select a new panel of three arbitrators, whichever it deems more appropriate and efficient under the circumstances.

12.5 This Section 12 shall survive the expiration or earlier termination of this Contract. Unless otherwise agreed in writing, Contractor shall carry on the Work and shall maintain the Project Schedule during any and all disputes, including but not limited to mediation, trial, or as applicable, arbitration proceedings, and the Owner shall continue to make payments not in dispute to the Contractor in accordance with this Agreement.

12.6 Claims, disputes and other matters in question between the Contractor and the Owner relating to the performance of the Work or the interpretation of the Contract Documents may be decided by the Owner's Vice President - Construction which decision will be rendered in writing within a reasonable time. The Owner may refer any such claim or dispute to the Architect. The Owner's decision, or the Architect's, if referred by or from the Owner's Vice President - Construction, shall be final and binding on the parties.

### **13. Termination of Agreement**

13.1 Owner shall have the right to terminate the Agreement at any time without cause and without liability to Contractor by giving Contractor fifteen (15) days' prior written notice; provided, however, Owner shall reimburse Contractor for that portion of the Contract Sum for which Contractor is obligated to pay prior to the effective date of such termination, less all payments previously made by Owner. All subcontracts shall contain provisions permitting termination on the same basis as the Agreement. If the Agreement is terminated after construction has commenced, Owner shall pay to Contractor an amount equal to that which would be payable under Paragraph 13.3 hereof.

13.2 If Contractor persistently or repeatedly refuses or fails to supply sufficient properly skilled workmen or proper materials required for the Work, if Contractor fails to make prompt payment to subcontractors or for

materials or labor, if Contractor persistently or repeatedly disregards laws, ordinances, rules, regulations or orders of any governmental authority having jurisdiction over the Project, or if Contractor otherwise is in violation of a material provision of any of the Contract Documents, then Owner may, without prejudice to any right or remedy, and after giving Contractor and its surety, if any, fifteen (15) days' prior written notice, terminate the Agreement and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor and any materials stored at off site areas and Owner may complete the Work by whatever method Owner may deem expedient. In any such case, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds the cost to Owner of completing the Work, including compensation for the Architect's additional services, Owner shall reimburse Contractor (to the extent of said difference) for costs incurred but not previously paid to Contractor. If the cost to Owner of finishing the Work exceeds the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner.

13.3 If the Work is stopped for a period of ninety (90) days under order of any court or any governmental authority having jurisdiction over the Project, through no fault or act or neglect of Contractor or any of its subcontractors, or any of their agents or employees, or any other person performing any of the Work under a contract with Contractor, or if Owner is guilty of a breach of any material provision of the Agreement and a cure for such breach is not commenced within fifteen (15) days after written notice from Contractor, then in any such event Contractor may, upon seven (7) days' prior written notice to Owner terminate the Agreement and recover from Owner payment for that portion of the Contract Sum payable to the effective date of such termination as defined elsewhere herein.

13.4 Contractor shall use its best efforts to make all contracts, subcontracts, purchase orders and other commitments entered into by Contractor in connection with the performance of the Work hereunder in a form assignable to Owner. In the event of any termination of the Agreement for any reason, as a condition to any payments to Contractor, Contractor shall, at the request of Owner, assign to Owner any such contracts, subcontracts, purchase orders and commitments as Owner designates, and Contractor shall use its best efforts to obtain consent to the assignment of any such contract, subcontract, purchase order and commitment not otherwise assignable in accordance with its terms and to assist in an orderly transition. All of the Owner's rights and obligations hereunder may be assigned by Owner to any party who owns a fee interest in and to the real property to be improved by the Project, Owner's landlord or any other party who is a construction lender therefor.

13.5 In the event of any termination of this Agreement, Contractor shall provide Owner with a detailed description of the costs and expenses incurred by Contractor within sixty (60) days after written notice of termination has been provided as herein required.

#### 14. Temporary Construction Facilities

14.1 Contractor shall provide and maintain hoists, bunkers, scaffolds and other temporary construction facilities (including the dual-gate system), excepting only such as are specifically required to be provided by others. Temporary hoists, bunkers and other temporary construction facilities (including the dual-gate system) shall be located in or about the Project in such a position as is practicable and where it will not interfere with the progress of the Work.

14.2 Contractor shall protect the construction site and surrounding public areas in compliance with the requirements of applicable codes and regulations of public agencies having jurisdiction. The obtaining and paying for all required permits and inspections in connection therewith shall be the responsibility of the Contractor. Where so required Contractor shall provide and maintain in working order at all times warning lights and pay all costs in connection therewith.

14.3 Upon completion of the Project, or prior thereto when so authorized or required to maintain job progress, protective fence and canopy and related construction shall be removed by the Contractor and the space occupied thereby restored to its original condition as approved by authorities having jurisdiction.

14.4 Contractor shall provide and maintain, in compliance with local custom and applicable codes and regulations of authorities having jurisdiction, complete temporary toilet facilities.

14.5 Upon completion of the Project, or prior thereto when so authorized, temporary toilet facilities shall be disconnected and all equipment and temporary construction connected therewith removed from the site.

14.6 Contractor shall arrange for connections and pay for water and electric service for power and light, including temporary connections used by subcontractors during the progress of the Work and until final acceptance. Should Contractor fail to settle claims for water, electric power or other material used in the Work, the Owner may reserve from the monies due or to become due to the Contractor a sum sufficient to satisfy such claims, and should any such claim remain unsettled for thirty (30) days after notice thereof has been given the Contractor, the Owner may settle such claim or claims out of the monies reserved and the amount expended for such purposes shall be deducted from monies due or to become due to the Contractor.

14.7 In the event of partial occupancy by the Owner or a tenant with Owner's written permission prior to final acceptance, the payment of charges for water, electricity and fuel for the portion of the Project occupied shall be the responsibility of the Owner or the tenant involved and the account name for the applicable utility service shall be changed accordingly to reflect the responsible party.

14.8 The Contractor shall provide two (2) independent telephones in the construction trailer and a computer with internet connection for the field supervision to communicate via the internet and/or email. One telephone shall be a cellular telephone. The superintendent shall carry this telephone with him when he is on the job site away from the trailer. The Contractor shall subscribe to the optional features of "call waiting" and "call hold" for both construction telephones.

14.9 Signs furnished by the Owner shall be erected on the site as and where required by the Owner. Contractor shall not place or allow to be placed any signs, billboards or posters on any portion of the site or the Project, except upon written permission from the Owner and then only of a size, material, color and type and at a location approved by the Owner.

14.10 Elevators may be used during the course of construction by Contractor once the elevators are declared operable by the elevator subcontractor, provided that the Contractor shall adequately protect all parts of the equipment, machinery, controls and cabs from damage or harm of any nature; and elevators shall be available to all other separate contractors and subcontractors as may be required by the Owner.

## 15. Use of Site and Premises

15.1 The working area outside of the building lines for use of storage of materials, for equipment operations and for temporary buildings is the area bounded by the limiting streets and property lines, unless otherwise restricted by the Drawings or Specifications. Such other space, including public sidewalks and roadways as may be permitted for temporary use by the applicable building codes or public authorities at the place of construction, may be used and the cost, if any, shall be borne solely by Contractor. Disturbed public areas shall be put back into their original state at completion of use, as approved and accepted by public authorities having jurisdiction.

15.2 Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not encumber the site with any extraneous materials or equipment.

15.3 The site shall not be encumbered by the storage of materials for extended periods prior to the time when installation of such materials will be required. No trenches required for utility systems and like operations shall be excavated until material required therefore is ready for installation and completion of such Work in the shortest time possible.

15.4 Contractor shall afford opportunity and facilities for the introduction and storage of material on the site and in the structure by subcontractors. Workmen, subcontractors or other representatives shall be admitted to the site only for the proper execution of the Work and shall have no tenancy.

15.5 Contractor shall send notices, make all necessary arrangements and perform all services for protection and maintenance of all public utilities during the construction period and until final acceptance of Project by Owner.

15.6 Contractor, at its sole cost and expense, shall obtain and pay for permits and inspections required to use public streets, sidewalks, curbs and paving, including cutting openings therein and shall post guarantees and bonds required and be responsible for repair and correction of damage as required by authorities having jurisdiction.

15.7 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations and valid orders of any public authority bearing on the performance of the Work. If Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by appropriate modification. If the Contractor performs any Work, knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice in writing to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

15.8 Until acceptance of the Project, or partial or full occupancy by Owner, Contractor, at its sole cost and expense, shall be the building manager and shall be responsible for providing and maintaining temporary doors for security, for locking and unlocking entrances, for protection of all parts from damage or from wetting by rains or flood water, for provision of safety and enforcement of safety regulations, for preventing unauthorized persons from entering the property, for general orderliness, for care of the adjacent properties and public ways abutting the property of Owner and for any temporary assignment of space within the site or premises.

#### **16. Submittals to Owner**

16.1 Contractor shall submit the following schedules to the Owner for approval no later than ten (10) days after Owner's request for each item. Contractor shall update each schedule listed below at the end of each month, if necessary to ensure accuracy.

16.1.1 Contemplated progress schedule by trade.

16.1.2 Contemplated payment schedule - indicate contemplated costs on a monthly basis.

16.1.3 Shop drawing and materials sample schedule - list all required shop drawings and samples for each part of the Work with reference to applicable technical section numbers. Include submission and required return dates.

16.1.4 Guarantees, warranties and bond schedule - list all required guarantees, warranties and bonds, other than warranties and guarantees required by these Contract Documents, including the Contractor's 1-year obligation to restore defects.

16.2 Contractor shall submit schedules for the review and approval of the Owner. If changes affecting the schedules are made in the Project by the Owner as the Work progresses, Contractor shall notify the Owner of the effect within five (5) days of receipt of written authorization to proceed with changes.

16.3 The progress schedule shall be revised from time to time as may be required to reflect changes in job progress or authorized extensions of construction time.

**17. Shop Drawings**

17.1 Shop drawings and/or plates and brochures, as required, shall be prepared by Contractor and submitted for approval well in advance of the time information will be required in order that the Work will not be delayed; provided, however, in no event shall any shop drawings be submitted more than twenty (20) days after the notice to proceed. No Work indicated on any one shop drawing shall be started until such drawing has been approved.

17.2 Electronic drawing compatible with the Architect's CAD system shall be submitted to the Architect for his checking. Required corrections will be noted on the Electronic Drawings and the Electronic Drawing will be returned to the Contractor via email, who shall make the necessary revisions and resubmit the revised Electronic Drawing for final approval. The Electronic Drawing, after the required corrections have been checked, or if correct when initially submitted and requiring no revisions, will be returned via email with properly approval / revision notation to the Contractor, who shall then make distribution to all parties concerned, including one copy for the Architect and, unless otherwise provided, one copy for the Owner.

17.3 Unless otherwise provided in the various trade sections of the Specifications, shop drawings requiring the interrelation of Work within a trade and shop drawings which require coordination and checking with shop drawings of another trade shall be submitted together to facilitate proper checking and coordination. In the event such coordinated submission is not made, the Contractor may be notified and checking of the shop drawings submitted will be delayed by the Architect until the remainder of the related shop drawings are submitted. Any delay in the Work resulting from Contractor's failure to comply with this requirement shall be the responsibility of Contractor and no extension of completion time will be allowed to compensate for delay in checking and return of the affected shop drawings.

17.4 So far as practicable and in order to facilitate the approval of shop drawings and their prompt return, each shop drawing shall bear a cross reference note referring to the detail number, sheet number or numbers of the Drawings showing the same Work and the Specification section covering the Work shown on the shop drawing.

17.5 Shop drawings shall indicate accurately the job conditions and dimensions and to conform to indications on the Drawings, the requirements of the Specifications and applicable supplementary details and instructions. They shall indicate the complete methods of connection, jointing, support, anchorage, reinforcement and other features of construction, together with necessary easements and clearances in the work of others, and relation of Work so detailed to finished surfaces of abutting Work. Materials and finishes of Work so detailed shall be indicated thereon.

17.6 The Architect's checking of shop drawings shall apply in a general sense only and will not relieve Contractor from the responsibility for proper fitting and construction of Work, nor from furnishing material and Work required by the Drawings, Specifications and related documents, which may not be indicated, or which may be indicated differently, on the approved shop drawings.

17.7 Shop drawings and schedules of all trades shall be submitted only by Contractor, who shall indicate by a signed stamp on the drawings or on the email transmitting said documents that he has checked the shop drawings and that the Work shown on them is in accordance with the Contract Documents and has been checked for dimensions and

relationship with work of all other trades involved. Under no conditions should shop drawings be submitted to the Architect by anyone other than the Contractor.

17.8 The checking of shop drawings and/or schedules by the Architect shall not relieve Contractor of responsibility for deviations or omissions from Drawings or the Specifications, unless he has in writing called the Architect's attention to such deviations and/or omissions at the time of submission of shop drawings, nor shall it relieve him of the responsibility for errors or omissions of any kind in shop drawings or schedules, unless such deviations, changes or omissions are duly approved as such and noted by specific approval on the drawings. When Contractor does call such deviations or omissions to the attention of the Architect, he shall state in his letter whether such deviations, changes or omissions involve any extra cost. If this is not mentioned, it will be assumed that no extra cost is involved for making the change, deviation or omission. Letters fully describing any deviations, changes or omissions, together with the reasons therefor, shall be submitted by Contractor to the Architect, with copy to the Owner, together with the affected drawings.

17.9 Any changes, deviations or omissions which affect the scope of the Work, appearance, or time or price shall be considered a Change Order and shall be subject to approval by Owner in the manner provided for other Change Orders.

17.10 Shop drawings which involve changes in the design concept of the Project, the basic methods of assembly or reduce the quality of the Work may be returned to Contractor without checking unless valid reason for the change is established at the time of submission.

17.11 No portion of the Work requiring a shop drawing, product data or sample submission shall be commenced until the submission has been approved by Architect. All such portions of the Work shall be performed in accordance with approved shop drawings, product data and samples. All changes made by Architect or Contractor or directions issued by Architect in connection with preparation of shop drawings, product data and samples which involve a change in cost or in time of performance hereunder shall be made and implemented in accordance with the procedures specified for Change Orders.

**18. Samples**

18.1 Contractor shall prepare and submit for Architect's approval all samples as required by the various trade sections of the Specifications and samples of other materials as may subsequently be requested. Unless specified otherwise, samples shall be submitted in duplicate.

18.2 Samples shall be submitted in sufficient time to allow the Architect reasonable time for consideration and so as not to delay progress of the Work in the event re-submission should be required.

18.3 Each sample shall be labeled with the following information and shall have a blank space large enough for the approval stamp:

- 18.3.1 Project name and location.
- 18.3.2 Name of Contractor.
- 18.3.3 Name of subcontractor and manufacturer.
- 18.3.4 Name, finish and composition of the material.
- 18.3.5 Location and/or intended use of the material.